

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
JOSEPH A. BAX**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD77339

DATE: April 28, 2015

Appeal From:

Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:

Division Two: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Attorneys:

Dora A. Fichter, Jefferson City, MO, for respondent.

Margaret M. Johnston, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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STATE OF MISSOURI,

RESPONDENT,

**v.
JOSEPH A. BAX,**

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No. WD77339

Cole County

Before Division Two: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Joseph Bax appeals from his conviction of the Class C felony of domestic assault in the second degree. Bax argues that there was insufficient evidence to support the conclusion that he caused physical injury to his victim, and that the trial court committed plain error in submitting a verdict director that included a paragraph defining "attempt" when that term was not used in the instruction.

AFFIRMED

Division Two holds:

The State charged Bax with injury means physical pain, illness, or any impairment of physical condition. Section 556.061(20). The evidence at trial, which included testimony that the victim experienced pain, and had red marks on her neck consistent with choking, was sufficient to permit the jury to conclude beyond a reasonable doubt that Bax caused physical injury to A.M. by choking her.

Bax argues that the trial court committed plain error by submitting a verdict director for domestic assault in the second degree which included an optional paragraph defining "attempt" when that term was not used in the instruction. Though inclusion of the optional paragraph was erroneous, under the facts and circumstances of this case, the error did not affect the verdict or so misdirect or fail to instruct the jury that a manifest injustice or miscarriage of justice resulted.

Opinion by Cynthia L. Martin, Judge

April 28, 2015

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